

April 2005

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 3

Common “Domestic Violence Crimes”

3.1 Chapter Overview

On page 63, add the following text to the end of the first paragraph:

In *People v Wilson*, ___ Mich App ___ (2005), the Court of Appeals addressed the issue of what constitutes a “domestic violence case.” The Court stated:

“Domestic violence includes any of the assaults. Indeed, even murder may be characterized as domestic violence. Domestic violence is not a specific crime, but a description of circumstances surrounding a violent crime in which the perpetrator and victim have a pre-existing relationship that may be categorized as a ‘domestic’ relationship.”

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.3 Audiotaped Evidence

B. Hearsay Objections to Audiotaped Evidence

2. Excited Utterance Exception Under MRE 803(2)

On page 168 before the last paragraph, insert the following text:

In *People v Walker*, ___ Mich App ___, ___ (2005), the defendant beat his live-in girlfriend with a stick and threatened to “blow her back out” with a handgun. Two hours after the beatings had stopped, the victim jumped from a second-story balcony, ran to a neighbor’s house, and asked the neighbor to call the police. The victim made statements to the neighbor, who wrote out the statements and gave them to the police. The victim did not appear for trial, and her statements were admitted under the excited utterance exception to the hearsay rule. The defendant argued that the statements should not have been admitted because of the two-hour delay between the assault and the victim’s escape, during which time the victim fell asleep and had time to “compose herself enough to jump from a second story window.” The defendant also argued that this delay provided the victim with time to fabricate the assault. The Court of Appeals rejected the defendant’s argument and upheld the admission of the statements as “excited utterances.” The Court of Appeals reiterated the Michigan Supreme Court’s holding in *People v Smith*, 456 Mich 543, 551 (1998), that there is no express time limit for excited utterances: the focus is on whether the declarant was still under the stress of the event at the time the statement was made. The Court found that the facts of this case, including the testimony of the neighbor and police officer that the victim was upset, crying, shaking, and hysterical, supported the trial court’s determination that the statements were properly admitted. *Walker*, *supra* at ___.

The Court of Appeals also found that the crime victim’s statements made to the neighbor and police officer did not constitute “testimonial statements” for the purposes of the Confrontation Clause. The defendant argued that pursuant to *Crawford v Washington*, 541 US 36 (2005), admission of the victim’s statements violated the Confrontation Clause because they were “testimonial statements.” The Court rejected the defendant’s argument and stated:

“We discern no holding or analysis in *Crawford* that would lead us to conclude that the victim’s statements to her neighbor, and the repetition of her statements to responding police officers, were testimonial hearsay violative of the Confrontation Clause.”